IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12408 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANJIBHAI PACHANABHAI PATEL

Versus

ASSISTANT COLLECTOR

Appearance:
MR BN PATEL for Petitioner
MR MUKESH PATEL, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 10/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Through this Special Civil Application, the petitioner herein seeks quashing and setting aside of the declaration dated 9th November 2000 issued under Sec.6 of the Land Acquisition Act.

2. The petitioner's land admeasuring 7 acres out of Survey No.19/1/3 of village Amirgadh was sought to be acquired for the Check post of Sales Tax. The petitioner came with the case that the notifications under Sec.4 in this regard was published on 22nd/23rd Sept.1999 and the notice for hearing under Sec.5(A) of the Land Acquisition Act was issued on 7th Oct.1999. The petitioner made a written representation on 28th March 2000 which was replied by the respondent no.1 on 24th April 2000 and thereafter the notification under Sec.6 was issued on 9th Nov.2000/10th Nov.2000.

3. The acquisition of the aforesaid land is challenged on the ground that the notification under Sec.6 was issued after the expiry of the period of one year from the date of the notification under Sec.4 and that the order had been passed by the Assistant Collector after hearing the objections under Sec.5(A) whereas the Assistant Collector was not authorised and had no jurisdiction to pass such order. It was also argued that there were other lands which could be made use of for the purpose of the said Check post and such lands which could be acquired for the purpose of Check post were fallow and unirrigated lands as compared to the petitioner's land.

4. In response to the notice issued by this Court, an affidavit-in-reply dated 30th Jan.2001 was filed under the signatures of the Assistant Collector, Banaskantha, Palanpur. When the matter came up before the Court on 14th March 2001, it was noticed that there were serious discrepancies in the dates with regard to the date of issue of the notifications under Sec.4 and 6 and the same had to be explained.

5. Now an affidavit dated 9th April 2001 has been filed under the signatures of Shri Ashwinkumar Balmukund Trivedi, Deputy Collector of Banaskantha, at Palanpur. From the averments made in this affidavit, it has become very clear that the notification under Sec.4 was published in the newspapers on 24th Sept.1999/23rd Sept.1999 and in the Gazette on 27th Aug.1999 and such notice had also been sent to the Talati, Amirgadh, for publication on 20th Nov.1999. Thereafter, Sec.6 notification was published in the Govt. Gazette on 5th July 2000 and also in the newspapers on 23rd/24th

Jan.2001. It therefore, becomes very clear that the notification under Sec.4 was first published in the Gazette on 27th Aug.1999 and thereafter in the newspapers on 23rd/24th Sept.1999. From the above dates, it becomes clear that the notifications under Sec.6 was published in the Gazette on 5th July 2000 which is within one year from the date of notification under Sec.4. Merely because the notification under Sec.6(2) had also been published on 16th Dec.2000 by the Talati-cum-Mantri, Amirgadh would not mean that the notification under Sec.6 was issued after the expiry of one year. The publication of the notification under Sec.6 in the Gazette dated 5th July 2000 is sufficient answer to the objection which has been raised with regard to the period of one year between the notification under Sec.4 and that issued under Sec.6. This submission as has been made on behalf of the petitioner is therefore found to be factually incorrect and the same is hereby rejected.

6. The second submission as has been made that the Assistant Collector could not exercise the power and in this regard, Mr.B.N.Patel has made reference to the provisions of Sec.3(c) of the Land Acquisition Act, 1894 and has submitted that the expression, 'Collector' means that the Collector includes the Deputy Commissioner and any officers specially appointed by the appropriate Govt. to perform the functions of the Collector under this Act. Mr.B.N.Patel has contended that in the instant case, the notification under Sec.6 had been issued under the signatures of the Assistant Collector and he only heard the objections which were filed under Sec.5(A) and that the Deputy Collector never exercised this power and therefore, the notification under Sec.6 by itself is illegal and is in contravention of Sec.3(c). It has been pointed out by Mr.Mukesh Patel, ld.AGP with the assistance of the officers of the Department who are present before the Court that under the provisions of the Bombay Land Revenue Code, under Sec.9 the Govt. may appoint to each District so many Assistant Collectors and so many Deputy Collectors as it may deem expedient and under Sec.10, any Assistant or Deputy Collector placed as an incharge shall, subject to the provisions of Chapter-13, perform all the duties and exercise all the powers conferred upon a Collector by this Act or any other law at the time being in force. Reading the aforesaid two provisions of the two Acts, i.e. Sec.3(c) of the Land Acquisition Act and Sec.9 and 10 of the Bombay Land Revenue Code, it becomes clear that under Sec.3(c) of the Land Acquisition Act, any officer specially appointed by the appropriate Govt. is included in the definition of 'Collector' to perform the functions

of a Collector under this Act. Under Sec.10 of the Bombay Land Revenue Code, any Assistant Collector or Deputy Collector is competent to exercise all the powers conferred upon a Collector. It has been explained that when there is a promotee officer, the use of designation Deputy Collector is made and as and when any IAS Officer is appointed on the same post, he is designated as Assistant Collector. Therefore, the nomenclature may differ corresponding to the promotee officers from the State services and the IAS officers, nevertheless the fact remains that whether it is Deputy Collector or an Assistant Collector, he is included in the expression of 'Collector' as has been prescribed under Sec.3(c) because even when an Assistant Collector is appointed, he is a person who can perform the functions of a Collector. Therefore, the use of the terminology of Assistant Collector or the Deputy Collector does not impinge upon the powers which an Assistant Collector may exercise. Therefore, even if the word 'Deputy Collector' is used in the notification dated 11th Oct.1993 read with the latter notification dated 22.6.1999, the Assistant Collector being an officer who can perform the functions of the Collector, is certainly an officer who could deal with the matters under Sec.5(A) and could decide the objections. This Court, therefore, does not find any substance in this contention raised on behalf of the petitioner. So far as the choice of the land to be made for acquisition is concerned, this Court cannot enter into this exercise as to whether the Government should have resorted to acquire some other lands than that of the petitioner. This is a question which cannot be taken up by this Court under Art.226 of the Constitution and it is for the Govt. to make a decision which cannot be a subject matter of judicial review before this Court under Art.226 of the Constitution unless there is cast iron case of malafides or a gross case of colourable exercise of abuse of power. We do not find any merit in this Special Civil Application. The same is hereby rejected. The notice is hereby discharged.

7. Mr.B.N.Patel for the petitioner submits that at the time of issuance of the notice in this petition on 4th Dec.2000, the petitioner was required to deposit a sum of Rs.1,000/-. It is submitted that such an amount has already been deposited and is lying in the Registry. Mr.B.N.Patel has submitted that the said amount of Rs.1,000/- may be sent to the Chief Minister's Relief Fund for Earth Quake victims. It is, therefore, ordered that the said amount be sent by the Registry to the Chief Minister's Relief Fund for Earth Quake victims, after bringing it to the notice of the Honourable Chief

Justice.

10th April 2001 (M.R. Calla, J.)

(D.H.Waghela, J.)